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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/585,036 | 05/04/2007 | Anders Umegard | 800738-0009 | 6187 |

27910 7590 03/30/2011
STINSON MORRISON HECKER LLP
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KANSAS CITY, MO 64106-2150

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| EXAMINER |
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CLERKLEY, DANIELLE A

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| ART UNIT | PAPER NUMBER |
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3643

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| MAIL DATE | DELIVERY MODE |
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03/30/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/585,036 | UMEGARD ET AL. | |
| | Examiner | Art Unit | |
| | DANIELLE CLERKLEY | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4,6,7,9,12,13,15-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-4, 6-7, 9, 12-13,15-20, and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/10/2011 has been entered.

Claim Rejections - 35 USC § 101

2. Claims 3-4, 6-7, 9, 12-13, 15-20, and 23-26 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

3. The examiner rejected the previously presented claim 23, rejected under Loosveld in view of Sjolund et al., and specifically supported the interpretation of the claim language in the response to arguments with the statement "analysis is conducted to detect an abnormal milk flow from at least one udder of the animal".

4. The applicant traversed the examiner's rejection and interpretation of the milking method, and further amended claim 23 to recite, "an analyzer device to detect an abnormal milk flow from a single teat". The traversal was on the basis of the following advantage of the present invention, **"to detect an abnormal milk flow from a single teat indicated by a predetermined departure from predicted relationship between the milk flow rate from all of the teats and the time from commencement of milking"**, such that **"one milk meter can be used rather than four milk meters to**

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measure flow from the respective teat cups", and further "use of a single milk meter which measures the total milk flow from all the teats to detect an abnormal milk flow from a single teat" (Applicant's Remarks 1/10/2011). Therefore, it is best understood, for the present invention, that "at least one" does not have the same meaning as "a single".

5. From the applicant's arguments as discussed above, it is unclear how one skilled in the art would know how to use the claimed invention, since it is in the examiner's view that the data representative of the measured total milk flow rate, in comparison with the predicted milk flow rate, would allow one to determine injury and/or mastitis in at least one teat. However, how is one skilled in the art able to determine if injury is present in a single teat, but not in a plurality of teats (e.g. 2 of 4 or 3 of 4).

6. Claims 3-4, 6-7, 9, 12-13, 15-20, and 23-26 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nilsson (U.S. Patent No. 6,971,330) shows measuring somatic cell count of total milk flow using a single milk meter.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE CLERKLEY whose telephone number is

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(571) 270-7611. The examiner can normally be reached on M-TH 8:00 AM - 5:00 PM EST, F 8:00 AM - 4:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/
Primary Examiner, Art Unit 3644

/DANIELLE CLERKLEY/
Examiner, Art Unit 3643